



# COMMONWEALTH of VIRGINIA

## DEPARTMENT OF ENVIRONMENTAL QUALITY

W. Tayloe Murphy, Jr.  
Secretary of Natural Resources

Northern Virginia Regional Office  
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Robert G. Burnley  
Director

Jeffery A. Steers  
Regional Director

### STATE WATER CONTROL BOARD ENFORCEMENT ACTION

#### SPECIAL ORDER BY CONSENT

ISSUED TO

VA-MARSHALL III, L.L.C.

FOR

JOHN MARSHALL III SITE  
(VPDES PERMIT NO. VA0090093)

RECEIVED

APR 28 2005

Northern Va. Region  
Dept. of Env. Quality

#### SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code §§ 62.1-44.15(8a and 8d) and 10.1-1185 between the State Water Control Board and VA-Marshall III, L.L.C. for the purpose of resolving certain violations of the State Water Control Law and Regulations.

#### SECTION B: Definitions:

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Va. Code" means the Code of Virginia (1950), as amended.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia and described in Va. Code §§ 62.1-44.7 and 10.1-1184.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.

5. "Order" means this document, also known as a Consent Special Order.
6. "Equity" means Equity Office Management L.L.C., agent for the owner.
7. "John Marshall" means John Marshall III Site.
8. "Owner" means VA-Marshall III, L.L.C., a Delaware Limited Liability Company.
9. "NVRO" means the Northern Virginia Regional Office of DEQ, located in Woodbridge, Virginia.
10. "Permit" means Virginia Pollutant Discharge Elimination System (VPDES) Permit No. VA0090093.
11. "Regulation" means 9 VAC 25-31-10 *et seq.*, the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation.
12. "O&M" means Operation and Maintenance Manual.
13. "DMR" means Discharge Monitoring Report.

#### **SECTION C: Finding of Facts and Conclusions of Law**

1. VA-Marshall III, L.L.C. owns and Equity, as agent for the Owner, manages John Marshall, which is located in McLean, Virginia. John Marshall is a nine-story office building. Groundwater from the underground foundation drainage system is treated and discharged into a storm sewer, which drains into Old Courthouse Spring Branch, a tributary to Wolftrap Creek, which drains to Difficult Run. Difficult Run discharges into the Potomac River. Discharges of groundwater are the subject of VPDES Permit No. VA0090093 which will expire on July 7, 2009.
2. The Board has evidence to indicate that the Owner has violated the Regulation and the Permit by failing to: (1) submit complete, timely discharge monitoring reports; (2) submit for approval a revised O&M manual or a statement confirming the accuracy and completeness of the current O&M manual; and (3) submit a completed Permit application in a timely manner. DEQ NVRO issued three warning letters (WL) and four notices of violation (NOVs) to the Owner for the above-referenced violations as follows: WL No. W2003-10-N-1013 issued October 23, 2003; WL No. W2003-11-N-1019 issued November 18, 2003, WL No. W2004-02-N-1003 issued February 10, 2004; NOV No. W2004-03-N-0001 issued March 8, 2004; NOV No. W2004-04-N-0002 issued April 5, 2004; NOV No. W2004-04-N-0015 issued May 10, 2004; and NOV No. W2004-06-N-0002 issued June 11, 2004.

3. DEQ also noted in a historical file review that the Owner has had previous DMRs that were missing, submitted late, and or incomplete. The file review also noted; however, that the Owner resolved this past noncompliance. Equity, as agent for the Owner, has subsequently submitted the DMRs listed in item two above. In addition, the Owner also submitted to DEQ, the completed Permit application listed in item two above, on April 25, 2004.
4. In discussions with Equity, agent for the Owner, Equity indicated to DEQ that a relocation of offices within the building in September 2003 rerouted the mail, which led to, delayed, lost, or misplaced mail. Equity also stated that the mail has since been rerouted to the correct address. In addition, Equity stated that a dedicated person had been assigned to handle the responsibilities and requirements related to the Permit.
5. In September and October 2004, DEQ contacted Equity to verify ongoing compliance and to ensure that the DMR due October 10, 2004 would be submitted on time. At that time, DEQ pointed out that with the re-issuance of the Permit in July 2004, the monthly monitoring and reporting changed to quarterly. DEQ also pointed out that the Permit requirement for submittal of a revised O&M manual or a statement confirming the accuracy and completeness of the current O&M manual to DEQ was due October 8, 2004.
6. DEQ received the DMR due October 10, 2004 on October 14, 2004; however determined that an incorrect DMR had been submitted. DEQ contacted Equity in October 2004 requesting that Equity submit the correct DMR and the revised O&M manual or a letter confirming the accuracy and completeness of the current O&M.
7. DEQ issued subsequent NOVs, NOV No. W2004-12-N-0004 on December 3, 2004 and NOV No. W2005-01-N-0002 issued January 5, 2005 for failure to submit a revised O&M manual or a statement confirming the accuracy and completeness of the current O&M manual.
8. Equity subsequently failed to submit the fourth quarter DMR due January 10, 2005. After numerous contacts by DEQ, in an attempt to address the noncompliance, Equity, as agent for the Owner, submitted the O&M letter and the DMRs due October 2004 and January 2005 on February 1 and February 3, 2005, respectively.
9. Appendix A of this Order requires that the Owner submit monthly DMRs and develop and submit for review and approval to DEQ, an internal written procedure designed to ensure timely submittal of DMRs.

#### **SECTION D: Agreement and Order**

Accordingly the State Water Control Board, by virtue of the authority granted it in Va. Code § 62.1-44.15(8a and 8d), orders the Owner and the Owner agrees, to perform the actions described in Appendix A of this Order. In addition, the Board orders the Owner, and the Owner voluntarily agrees, to pay a civil charge of \$5,000.00 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check payable to the "Treasurer of Virginia", delivered to:  
Receipts Control  
Department of Environmental Quality  
Post Office Box 10150  
Richmond, Virginia 23240

The Owner's Federal Identification Number shall be noted on the check and it shall note that payment of the charge is being made in accordance with the requirements of this Order.

#### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend the Order with the consent of the Owner, for good cause shown by the Owner, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein, including those matters addressed in WL No. W2003-10-N-1013 issued on October 23, 2003; WL No. W2003-11-N-1019 issued on November 18, 2003; WL No. W2004-02-N-1003 issued on February 10, 2004, and Notices of Violation (NOV) NOV No. W2004-03-N-0001 issued on March 8, 2004, NOV No. W2004-04-N-0002 issued on April 5, 2004, NOV No. W2004-04-N-0015 issued on May 10, 2004, NOV No. W2004-06-N-0002 issued on June 11, 2004, NOV No. W2004-12-N-0004 issued on December 3, 2004, and NOV No. W2005-01-N-0002 issued January 5, 2005. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For purposes of this Order and subsequent actions with respect to this Order, the Owner admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. The Owner consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. The Owner declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, and the State Water Control Law, and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by the Owner to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement

actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.

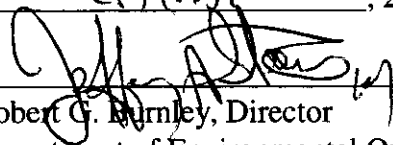
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. The Owner shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. The Owner shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. The Owner shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
  - a. the reasons for the delay or noncompliance;
  - b. the projected duration of any such delay or noncompliance;
  - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
  - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 24 hours of learning of any condition above, which the Owner intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.


9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and the Owner. Notwithstanding the foregoing, the Owner agrees to be bound by any compliance date set forth herein, which precedes the effective date of this Order.
11. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to the Owner. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve the Owner from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. By its signature below, the Owner voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of 28 September, 2005.

  
Robert G. Burnley, Director  
Department of Environmental Quality

VA-Marshall III, L.L.C., a Delaware limited liability company voluntarily agrees to the issuance of this Order.

By: , of  
Equity Office Management, L.L.C., a Delaware limited liability company, by power of attorney.

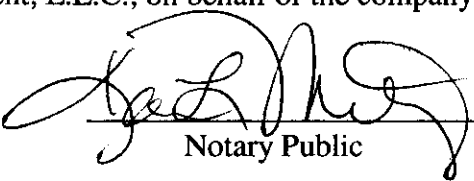
Date: April 26, 2005

State of Illinois  
City/County of Cook

The foregoing document was signed and acknowledged before me this 26<sup>th</sup> day of

April, 2005, by Paul Saccone, who is  
(name)

VP - Corporate Engineering of Equity Office Management, L.L.C., on behalf of the company.  
(title)

  
Notary Public

My commission expires: April 29, 2006



## **APPENDIX A SCHEDULE OF COMPLIANCE**

The Owner shall:

1. By April 26, 2005, submit to DEQ for review and approval a written procedure designed to ensure responsibilities and requirements related to any Permit compliance submittals are handled in a timely manner. Within two weeks of receipt of written approval, implement the procedure.
2. Ensure DMRs are properly filled out and submitted to DEQ by the tenth of the month after monitoring takes place. Equity, as agent for owner, shall begin submitting monthly DMRs beginning with the April 10, 2005 submittal date and shall continue to submit monthly until otherwise notified by DEQ.